

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
[ ] DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

[ ],

Defendant(s).

No. CR [ ]-[ ]-MWB

**SAMPLE  
PRELIMINARY AND FINAL  
INSTRUCTIONS  
TO THE JURY  
(CRIMINAL CASE:  
REVISED 08/02)**

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## **VERDICT FORM**

## **PRELIMINARY INSTRUCTION NO. 1 - PRELIMINARY INSTRUCTIONS**

Members of the jury, these preliminary instructions are given to help you better understand the trial and your role in it. Consider these instructions, together with all written and oral instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case.

## **PRELIMINARY INSTRUCTION NO. 2 - DUTY OF JURORS**

Your duty is to decide from the evidence whether the defendant(s) [IS/ARE] [EACH] not guilty or guilty of the crime(s) charged against [HIM/HER/THEM]. You will find the facts from the evidence. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts that have been established by the evidence. You will then apply the law, which I will give you in my instructions, to the facts to reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law as I give it to you. Do not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from any ruling or other comment I may make that I have any opinions on how you should decide the case.

Please remember that only defendant(s) [NAME(S)], not anyone else, [IS/ARE] on trial here. [THIS/THESE] defendant(s) [IS/ARE] on trial **only** for the crime(s) charged against [HIM/HER/THEM], not for anything else.

Finally, you must give separate consideration to [the evidence about each defendant] [and] [each charge against THE/THAT defendant]. [THE/EACH] defendant is entitled [to be treated separately] [and] [to have each charge against HIM/HER considered separately]. Therefore, **you must return a separate, unanimous verdict on [each charge] against [THE/EACH] defendant.**

### **PRELIMINARY INSTRUCTION NO. 3 - ELEMENTS OF OFFENSES**

Each offense consists of “elements,” which must be proved beyond a reasonable doubt. To help you follow the evidence, I will give you a summary of the elements of each offense charged in the indictment. However, I must first explain some preliminary matters concerning the elements of all of the offenses charged.

The charge(s) against the defendant(s) [IS/ARE] set out in an indictment. An indictment is simply an accusation. It is not evidence of anything. The defendant(s) [HAS/HAVE] pleaded not guilty to the crime(s) charged against [HIM/HER/THEM]; therefore, [HE/SHE/EACH] is presumed to be innocent unless and until the prosecution proves [HIS/HER] guilt beyond a reasonable doubt on an offense charged against [HIM/HER].

The indictment charges that the offense(s) were committed [“between about” two dates], [“on or about” a certain date], [or] [“during about” a certain month]. The prosecution does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date alleged in the indictment.

[INCLUDE OTHER CASE-SPECIFIC DEFINITIONS, INCLUDING, FOR EXAMPLE, THE FOLLOWING:

[In this instruction, and all of the other instructions in this case, I will refer to actual (pure) methamphetamine as “pure methamphetamine” and I will refer to a mixture or substance containing a detectable amount of methamphetamine as “a methamphetamine mixture.”]

[When I refer to a “controlled substance,” I mean any drug or narcotic the manufacture, possession, possession with intent to distribute, or distribution of which is prohibited or regulated by federal law.] [Pure methamphetamine and a methamphetamine

mixture are both “controlled substances.”]

[The indictment charges that the defendant distributed a specific amount of crack cocaine. The prosecution does not have to prove that the offense involved the amount or quantity of crack cocaine charged in the indictment, but the prosecution must prove, and you must determine, that the controlled substance in question was in fact crack cocaine as charged in the indictment.]

I will now give you a summary of the elements of the offenses charged in the indictment.

***COUNT 1: [SIMPLE IDENTIFICATION]***

Count I of the indictment charges [NAME(S)] with the crime of [IDENTIFY THE CRIME IN SIMPLE TERMS]. To prove a defendant guilty of [IDENTIFY CRIME IN SIMPLE TERMS], as charged in Count 1 of the indictment, the prosecution must prove the following [NUMBER] essential elements beyond a reasonable doubt as to that defendant:

*One*, [ ];

*Two*, [ ]; and

*Three*, [ ].

***COUNT 2: [SIMPLE IDENTIFICATION]***

Count 2 of the indictment charges [NAME(S)] with the crime of [CONTINUE FOR EACH OFFENSE CHARGED]

[FOR CONSPIRACY OFFENSES, INCLUDE THE FOLLOWING:

***Objectives***

To help you decide whether or not there was an agreement to commit one or more of the offenses identified as objectives of the conspiracy, you should consider the elements

of those offenses. The elements of [SUBSTANTIVE OFFENSE] are the following: (1) a person [STATE ELEMENT]; and (2) that person [STATE ELEMENT]. [REPEAT FOR ADDITIONAL OFFENSES IDENTIFIED AS OBJECTIVES OF THE CONSPIRACY]. To find a defendant guilty of conspiracy, as charged in **Count [#]**, you do not have to find that any offense identified as an objective of the conspiracy was actually committed.]

[FOR DRUG OFFENSES, INCLUDE THE FOLLOWING INSTRUCTION ON DRUG QUANTITY ONCE, IDENTIFYING OFFENSES ON WHICH A DRUG QUANTITY DETERMINATION IS REQUIRED:

***QUANTITY OF METHAMPHETAMINE***

The prosecution does not have to prove that a drug-trafficking offense involved the amount of [SPECIFIC CONTROLLED SUBSTANCE] stated in the indictment. However, if you find a defendant guilty of [the “conspiracy” offense, as charged in **Count [#]** of the indictment], [or] [the “manufacturing” offense, as charged in **Count [#]**], [under either a “personal commission” or “aiding and abetting” alternative], then you must also determine beyond a reasonable doubt the quantity of [SPECIFIC CONTROLLED SUBSTANCE] actually involved in the drug-trafficking offense for which that defendant can be held responsible.]

This is only a preliminary outline of the elements of the offenses charged. At the end of the trial, I will give you final written instructions on these matters. Because they are more detailed, those final instructions govern on the elements of the offenses with which [NAME(S)] [IS/ARE] charged.

## **PRELIMINARY INSTRUCTION NO. 4 - OUTLINE OF TRIAL**

[ADJUST FOR NUMBER OF DEFENDANTS AND ATTORNEYS]

The trial will proceed as follows:

After these preliminary instructions, the prosecutor may make an opening statement. Next, the lawyer for each defendant may, but does not have to, make an opening statement. An opening statement is not evidence. It is simply a summary of what the lawyer expects the evidence to be.

The prosecution will then present its evidence and call witnesses, and the lawyers for the defendants may, but have no obligation to, cross-examine. Following the prosecution's case, each defendant may, but does not have to, present evidence and call witnesses. If a defendant calls witnesses, the prosecutor may cross-examine them.

After the evidence is concluded, I will give you most of the final instructions. The lawyers will then make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then give you the remaining final instructions on deliberations, and you will retire to deliberate on your verdict.



## **PRELIMINARY INSTRUCTION NO. 5 - PRESUMPTION OF INNOCENCE**

[ADJUST FOR NUMBER OF DEFENDANTS]

The defendants are each presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendants, or the fact that they are here in court. The presumption of innocence remains with the defendants throughout the trial. That presumption alone is sufficient to find them not guilty. The presumption of innocence may be overcome as to a particular defendant only if the prosecution proves, beyond a reasonable doubt, each element of a crime charged against that defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to any defendant to prove his innocence, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that a defendant has committed each and every essential element of an offense charged in the indictment against that defendant, you must find that defendant not guilty of that offense.

## **PRELIMINARY INSTRUCTION NO. 6 - REASONABLE DOUBT**

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

## **PRELIMINARY INSTRUCTION NO. 7 - DEFINITION OF EVIDENCE**

Evidence is:

1. Testimony.
2. Exhibits I admit into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be “direct” or “circumstantial.” The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

The weight of the evidence is not determined by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence should not be determined merely by the number or volume of documents or exhibits. The weight of evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

**PRELIMINARY INSTRUCTION NO. 8 - TRANSCRIPT OF  
RECORDED CONVERSATION**

You may [hear a tape recording] [AND/OR] [view a videotape recording] accompanied by a typed transcript. The transcript also undertakes to identify the speakers engaged in the conversation. You are permitted to view the transcript for the limited purpose of helping you follow the conversation as you listen to the recording, and also to help you keep track of the speakers. The transcript, however, is not evidence. A recording itself is the primary evidence of its own contents.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you may hear here about the preparation of the transcript and upon your own examination of the transcript in relation to what you hear on the tape recording. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Differences in meaning between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice. You should, therefore, rely on what you hear rather than what you read when there is a difference.

## **PRELIMINARY INSTRUCTION NO. 9 - CREDIBILITY OF WITNESSES**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If a defendant testifies, you should judge [HIS/HER] testimony in the same manner in which you judge the testimony of any other witness.

[Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason the expert may be biased, and all of the

other evidence in the case.]

Finally, just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credence to such a witness's testimony than you give to any other witness's testimony.

**PRELIMINARY INSTRUCTION NO. 10 - BENCH  
CONFERENCES AND RECESSES**

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

### **PRELIMINARY INSTRUCTION NO. 11 - OBJECTIONS**

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.



## **PRELIMINARY INSTRUCTION NO. 12 - NOTE-TAKING**

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

### **PRELIMINARY INSTRUCTION NO. 13 - CONDUCT OF THE JURY**

Finally, to insure fairness, you as jurors must obey the following rules:

*First*, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

*Third*, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

*Fourth*, during the trial you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

*Fifth*, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

*Sixth*, do not do any research or make any investigation about the case on your own.

*Seventh*, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

*Eighth*, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform me of any problem.

**DATED** this [ ] day of [ ], 2002.

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MARK W. BENNETT  
CHIEF JUDGE, U. S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

## **FINAL INSTRUCTION NO. 1 - INTRODUCTION**

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

[However, the [describe withdrawn charges or alternatives] are no longer before you and will not be decided by you. You should not guess about or concern yourselves with the reason that these charges [or alternatives] are no longer before you.

**FINAL INSTRUCTION NO. 2 - [“INTENT,”] [“KNOWLEDGE,”]  
[AND “WILLFULNESS”]**

[“Intent,”] [“knowledge,”] [and “willfulness”] are elements of the offenses charged in this case and must be proved beyond a reasonable doubt. [“Intent”,] [“knowledge”] [and “willfulness”] may be proved like anything else. [An act is done “knowingly” if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful.] [An act is done “willfully” if the defendant acts voluntarily and intentionally, without coercion.]

**FINAL INSTRUCTION NO. 3 - [“POSSESSION,”] [“DISTRIBUTION,”]  
[AND “DELIVERY”]**

The offenses charged [or alleged to be the objectives of the conspiracy offense charged] involve [“distribution,”] [“possession,”] [and/or] [“delivery”] of [a controlled substance] [firearm]. The following definitions of these terms apply in these instructions:

The law recognizes several kinds of “possession.” A person who knowingly has direct physical control over a thing, at a given time, is then in “actual possession” of it. A person who, although not in actual possession, has both the power and the intention at a given time to exercise control over a thing, either directly or through another person or persons, is then in “constructive possession” of it. If one person alone has actual or constructive possession of a thing, possession is “sole.” If two or more persons share actual or constructive possession of a thing, possession is “joint.” Whenever the word “possession” has been used in these instructions, it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

In addition, mere presence where a thing was found or mere physical proximity to the thing is insufficient to establish “possession” of that thing. Knowledge of the presence of the thing, at the same time one has control over the thing or the place in which it was found, is required. Thus, in order to establish “possession” of a thing, in addition to knowledge of the presence of the thing, the prosecution must establish that, at the same time, (a) the person intended to exercise control over the thing or place in which it was found; (b) the person had the power to exercise control over the thing or place in which it was found; and (c) the person knew that he or she had the power to exercise control over the thing or place in which it was found.

[The term “distribute” means to deliver a controlled substance to the actual or constructive possession of another person. The term “deliver” means the actual,

constructive, or attempted transfer of a controlled substance to the actual or constructive possession of another person. It is not necessary that money or anything of value change hands. The law prohibits the “distribution” of a controlled substance; the prosecution does not have to prove that there was a “sale” of a controlled substance to establish distribution or intent to distribute.]

**FINAL INSTRUCTION NO. 4 - COUNT I: [SIMPLE  
IDENTIFICATION]**

**Count [#]** of the indictment charges that, [STATE OR PARAPHRASE THE CHARGE FROM THE INDICTMENT]. [A defendant may be found guilty of [SIMPLE IDENTIFICATION], as charged in **Count [#]** of the indictment, under [either or both] [one or more] of the following alternatives: [(1) personally committing the offense]; [(2) attempting to commit the offense]; [or (2) aiding and abetting another to commit the offense]. I will explain the elements of these alternatives in turn.

***[First alternative: Personal commission]***

For you to find [A/THE] defendant guilty of personally committing [SIMPLE IDENTIFICATION], the prosecution must prove each of the following essential elements beyond a reasonable doubt against him:

*One,* [CONTINUE AS APPROPRIATE]

For you to find [A/THE] defendant guilty of [SIMPLE IDENTIFICATION], as charged in **Count [#]** of the indictment [under this “personal commission” alternative], the prosecution must prove [BOTH/ALL] of these essential elements beyond a reasonable doubt against him. Otherwise, you must find him not guilty of [SIMPLE IDENTIFICATION] [under this “personal commission” alternative].

[CONTINUE FOR OTHER ALTERNATIVES]



**FINAL INSTRUCTION NO. 5 - ACTS AND STATEMENTS OF  
CO-CONSPIRATORS**

[USE IF A CONSPIRACY IS CHARGED]

If you find beyond a reasonable doubt that a conspiracy existed and that [A/THE] defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by [THE/THAT] defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to [THE/THAT] defendant, even though they were done or made in [THE/THAT] defendant's absence and without [HIS/HER] knowledge. This includes acts done or statements made before the defendant joined the conspiracy.

### **FINAL INSTRUCTION NO. 6 - SPECIFIC DEFENSE(S)**

In addition to denying that the prosecution has proved beyond a reasonable doubt all of the essential elements of the offenses charged, the defendant(s) also assert(s) the following specific defense(s):

[THE COURT WILL INSERT HERE ANY “THEORY OF DEFENSE” INSTRUCTION REQUESTED BY THE DEFENDANT AND SUPPORTED BY THE EVIDENCE.]

Remember that the burden never shifts to a defendant in a criminal case to prove his specific defense or otherwise to prove his innocence.

**FINAL INSTRUCTION NO. 7 - QUANTITY OF  
[CONTROLLED SUBSTANCES/SPECIFIC SUBSTANCE]**

If you find a defendant guilty of [the “conspiracy” offense, as charged in **Count 1** of the indictment and explained in Final Jury Instruction No. ?], [or the “manufacturing” offense, as charged in **Count 2** of the indictment and explained in Final Jury Instruction No. ?, under either a “personal commission” or “aiding and abetting” alternative], then you must also determine beyond a reasonable doubt the quantity of [CONTROLLED SUBSTANCE CHARGED] actually involved in the drug-trafficking offense for which that defendant can be held responsible. The prosecution does not have to prove that a drug-trafficking offense involved the amount or quantity of the controlled substance charged in the indictment, although the prosecution must prove beyond a reasonable doubt the quantity of the controlled substance actually involved in a particular drug-trafficking offense for which the defendant can be held responsible. Therefore, you must ascertain whether or not the controlled substance in question was in fact [CONTROLLED SUBSTANCE CHARGED], as charged in the indictment, and you must determine beyond a reasonable doubt the amount of the controlled substance involved in the drug-trafficking offense for which the defendant can be held responsible. In so doing, you may consider all of the evidence in the case that may aid in the determination of these issues.

[A defendant guilty of conspiracy to [manufacture], [distribute], [or possess with intent to distribute] [CONTROLLED SUBSTANCE CHARGED], as charged in **Count [#]** of the indictment, and explained in Final Jury Instruction No. ?, is responsible for quantities of the controlled substance that [HE/SHE] actually [manufactured], [distributed], [or possessed with intent to distribute], or agreed to [manufacture], [distribute], [or possess with intent to distribute]. Such a defendant is also responsible for those quantities of the controlled substance that fellow conspirators [manufactured], [distributed], [or possessed

with intent to distribute], or agreed to [manufacture], [distribute], [or possess with intent to distribute], if you find that the defendant could have reasonably foreseen, at the time he joined the conspiracy or while the conspiracy lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy.]

[A defendant guilty of [manufacturing], [distributing], [or possessing with intent to distribute] [CONTROLLED SUBSTANCE CHARGED], as charged in **Count [#]** of the indictment, [under one or both of the alternatives] [as] explained in Final Jury Instruction No. ?, is responsible for [CONTROLLED SUBSTANCE CHARGED] that [HE/SHE] personally [manufactured], [distributed], [or possessed with intent to distribute], [or aided and abetted another to] [manufacture], [distribute], [or possess with intent to distribute].

You must determine the *total quantity* of the controlled substance involved in a particular offense for which the defendant can be held responsible. You must indicate the *range* within which that *total quantity* falls. You must determine that *total quantity* in terms of grams of [CONTROLLED SUBSTANCE CHARGED]. In making your determination of quantity as required, it may be helpful to remember that one pound is approximately equal to 453.6 grams, and that one ounce is approximately equal to 28.35 grams.

Again, you must determine *beyond a reasonable doubt* the quantity of the controlled substance involved in the drug-trafficking offense for which a defendant can be held responsible.

## **FINAL INSTRUCTION NO. 8 - IMPEACHMENT**

In Preliminary Instruction No. 9, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

[ADDITIONAL IMPEACHMENT INSTRUCTIONS REQUESTED BY THE PARTIES AND SUPPORTED BY THE EVIDENCE WILL BE INSERTED HERE. EXAMPLES OF IMPEACHMENT INSTRUCTIONS THE COURT HAS USED IN PREVIOUS TRIALS INCLUDE THE FOLLOWING:

You have heard evidence that witnesses [NAMES] have each been convicted of a crime. You may use that evidence only to help you decide whether or not to believe these witnesses and how much weight to give their testimony.

Similarly, you have heard evidence that [NAMES] have pleaded guilty to a charge that arose out of the same events for which defendant [NAME] is now on trial. You cannot consider such a witness’s guilty plea as any evidence of the guilt of the defendant. Rather, you can consider such a witness’s guilty plea only for the purpose of determining how much, if at all, to rely upon his or her testimony.

You have also heard evidence that the defendant was previously convicted of a felony

[category] offense/engaged in similar, but uncharged, drug transactions. You may *not* use this evidence to decide whether the defendant carried out the acts involved in the crime charged in the indictment in this case. However, if you are convinced beyond a reasonable doubt, on other evidence introduced, that the defendant did carry out the acts involved in the crime charged in the indictment, then you may use this evidence of her prior conviction of a [similar] offense/evidence that she engaged in similar transactions to help you consider the defendant's intent, knowledge, motive, and lack of mistake or accident in carrying out those acts involved in the crime charged in the indictment in this case. Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that she committed such an act in this case. You may not convict a person simply because you believe she may have committed similar acts in the past. The defendant is on trial only for the crime charged in the indictment in this case, and you may consider the evidence of prior acts only on the issues of the defendant's intent, knowledge, motive, and lack of mistake or accident in carrying out the acts involved in the crime charged in the indictment in this case.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You have heard evidence that [NAMES] are testifying pursuant to plea agreements and hope to receive reductions in their sentences in return for their cooperation with the government in this case. If the prosecutor handling such a witness's case believes the witness has provided "substantial assistance," the prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for such a witness for substantial assistance unless the U.S. attorney files a motion requesting such a reduction. If the motion for reduction of sentence for substantial assistance is filed by the U.S. attorney, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so,

how much to reduce it. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the witness's hope of receiving a reduction in sentence is for you to decide.

2. You have also heard testimony from [NAMES] that they participated in the crime charged against the defendant. Their testimony was received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may have been influenced by his or her desire to please the government or to strike a good bargain with the government about his or her own situation is for you to determine.

3. You have also heard evidence that [NAMES] is/are testifying in the hope that the government will not file charges against him/her/them. His/Her/Their testimony was received in evidence and you may consider it. You may give her testimony such weight as you think it deserves. Whether or not his/her/their testimony may have been influenced by his/her/their hope that the government will not file charges against him/her/them is for you to determine.

4. You have heard evidence that [name] had an arrangement with the government under which [s/he] [received a specified benefit] for providing information to the government. [His/her] testimony was received in evidence and you may consider it. You may give the testimony of this witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by receiving such a benefit is for you to decide.]

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

**FINAL INSTRUCTION NO. 9 - PRESUMPTION OF INNOCENCE  
AND BURDEN OF PROOF**

[NAME(S)] [IS/ARE] [EACH] presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of [NAME(S)] or the fact that [HE/SHE/THEY] are here in court. The presumption of innocence remains with [NAME(S)] throughout the trial. That presumption alone is sufficient to find [HIM/HER/THEM] not guilty. The presumption of innocence may be overcome as to any defendant only if the prosecution proves, beyond a reasonable doubt, each element of a crime charged against that defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to any defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. [Therefore, the fact that a defendant did not testify must not be discussed or considered by you in any way when deliberating and arriving at your verdict.] A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that a defendant has committed each and every element of an offense charged in the indictment against him or her, you must find that defendant not guilty of that offense.



## **FINAL INSTRUCTION NO. 10 - REASONABLE DOUBT**

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. A reasonable doubt is a doubt based upon reason and common sense and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

## **FINAL INSTRUCTION NO. 11 - DUTY TO DELIBERATE**

A verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish [A/THE] defendant's guilt beyond a reasonable doubt on an offense charged against [HIM/HER], then [THE/THAT] defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for [THE/THAT] defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes [A/THE] defendant's guilt beyond a reasonable doubt on an offense charged, then your vote should be for a verdict of guilty against [THE/THAT] defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for [THE/THAT] defendant on that charge. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of a crime charged. Remember also that the question before you can never be whether the government wins or loses the case. The

government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

## FINAL INSTRUCTION NO. 12 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, if the defendant is guilty, the sentence to be imposed is my responsibility. You may not consider punishment of [NAME(S)] in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

*Fourth*, your verdict must be based solely on the evidence and on the law in these instructions. The verdict, whether not guilty or guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Finally*, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. **Your verdict must be unanimous.** You will take the verdict form to the jury room. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to

announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

**DATED** this [ ] day of [ ], 2002.

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MARK W. BENNETT  
CHIEF JUDGE, U. S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
[ ] DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

[NAME(S)],

Defendant(s).

No. CR [ ]-[ ]-MWB

**VERDICT FORM**

We, the Jury, unanimously find defendant [NAME] guilty or not guilty as follows:

COUNT [#]		VERDICT
<b>Step 1:</b>	On the charge of conspiracy, as explained in Final Jury Instruction No. [ ], please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<b>Step 2:</b>	<i>If you have found defendant [NAME] guilty of this offense in Step 1, please indicate the prohibited conduct that was an objective of the conspiracy.</i>	
	<input type="checkbox"/>	Manufacture of a mixture or substance containing a detectable amount of [SPECIFIC CONTROLLED SUBSTANCE]
	<input type="checkbox"/>	Distribution of a mixture or substance containing a detectable amount of [SPECIFIC CONTROLLED SUBSTANCE]
	<input type="checkbox"/>	Possession with intent to distribute a mixture or substance containing a detectable amount of [CONTROLLED SUBSTANCE]
<b>Step 3:</b>	<i>If you have found defendant [NAME] guilty of this offense in Step 1, please indicate the quantity of [SPECIFIC CONTROLLED SUBSTANCE] for which you find beyond a reasonable doubt that [NAME] can be held responsible, as quantity of [CONTROLLED SUBSTANCE] is explained in Final Jury Instruction No. 7.</i>	
	<input type="checkbox"/>	[5] grams or more of a mixture or substance containing a detectable amount of [CONTROLLED SUBSTANCE]
	<input type="checkbox"/>	Less than [5] grams of a mixture or substance containing a detectable amount of [CONTROLLED SUBSTANCE]

COUNT [#]		VERDICT
<b>Step 1:</b>	On the charge of [manufacturing] [distributing] [possession with intent to distribute], as explained in Final Jury Instruction No. [ ], please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<b>Step 2:</b>	<i>If you have found defendant [NAME] guilty of this offense in Step 1, please indicate the alternative or alternatives that you unanimously find the prosecution has proved beyond a reasonable doubt.</i>	
	<input type="checkbox"/>	Personally committing a [manufacturing] [distributing] [possession with intent to distribute] offense
	<input type="checkbox"/>	Attempting to commit a [manufacturing] [distributing] [possession with intent to distribute] offense
	<input type="checkbox"/>	Aiding and abetting a [manufacturing] [distributing] [possession with intent to distribute] offense
<b>Step 3:</b>	<i>If you have found defendant [NAME] guilty of this offense, please indicate the quantity of [CONTROLLED SUBSTANCE] for which you find beyond a reasonable doubt that [NAME] can be held responsible, as quantity of [CONTROLLED SUBSTANCE] is explained in Final Jury Instruction No. 7.</i>	
	<input type="checkbox"/>	[5] grams or more of a mixture or substance containing a detectable amount of [CONTROLLED SUBSTANCE]
	<input type="checkbox"/>	Less than [5] grams of a mixture or substance containing a detectable amount of [CONTROLLED SUBSTANCE]

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Date

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Foreperson

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